

Wile, Kenneth E.

From: Wile, Kenneth E.
Sent: Friday, December 03, 2004 3:33 PM
To: 'Brian Sullivan'
Cc: Rob Wilcox (E-mail); 'steven.allen@mills-reeve.com'; 'anthony.minnis@mills-reeve.com'; Corr, Patrick; Taylor, Phillip D.; Edmon L. Morton (E-mail)
Subject: RE: Jaeban

Brian:

As you requested, I have waited until today to respond to your e-mail.

1. Persistent Failure to Answer Whether All E-Mail Servers Have Been Found and to Identify Witnesses. I first asked Rob Wilcox, while we were both in England in August, whether Mr. Jaeban or his counsel have had access to all of Jaeban UK's e-mailer servers (or other sources of e-mails) in light of the small number of e-mails produced to BRACII by Mr. Allen's predecessor firm. I've now had to ask in writing three times, as I have also had to ask who has material knowledge about the whereabouts of Jaeban UK's e-mail servers and files. Please provide a response in writing by Tuesday, December 7th, or we will assume that Mr. Jaeban declines to respond.

2. Failure to Produce Documents Promptly after November 22nd. Mr. Allen was to have reviewed newly-retrieved documents on November 22nd, yet we are not to see them until an unidentified date after December 9th, 2½ weeks later. Since Mills & Reeve has the prior document production (and since Thanksgiving is not a British holiday), it's not clear why there has been this further delay. Above all, it is your responsibility as Delaware counsel, not your client's or Mr. Allen's, to ensure that *all* responsive documents are produced to us promptly.

I would like to know by Tuesday:

a) the volume of e-mails and the type and volume of other documents that have been reviewed by Mills & Reeve since the September 21st argument on BRACII's second motion for sanctions; and

b) when I can expect to have the documents in-hand in Chicago. (We'll gladly pay the postage.)

By the time the documents are produced, BRACII will also require your assurance that there has been full compliance with the Joint First Request for Production and the unobjected portions of the Joint Second Request.

I recognize that the foregoing will require you to contact Mills & Reeve on Monday or Tuesday. (For that reason, Messrs. Allen and Minnis are copied on this e-mail.) Since the second sanctions argument (in which Rob Wilcox assured the Court that Mr. Jaeban was working diligently on these issues) took place almost 2½ months ago, we have certainly been patient, as your last e-mail recognized. Absent real compliance now, however, we will apprise the Court of the lack of it

Regards.

Ken

Kenneth E. Wile
Sidley Austin Brown & Wood LLP
Bank One Plaza
Chicago, Illinois 60603
312-853-2081
312-853-7036 (fax)
kwile@sidley.com

-----Original Message-----

From: Brian Sullivan [mailto:bsullivan@werbsullivan.com]
Sent: Tuesday, November 30, 2004 1:52 PM
To: kwile@sidley.com
Cc: steven.allen@mills-reeve.com; rdwilcox@mindspring.com;
anthony.minnis@mills-reeve.com; Morton, Edmon
Subject: Jaeban

Ken,

I have received and glanced at your letter. I am busy preparing for an oral argument in our State Supreme Court in Dover tomorrow, which will usurp all of my time for the next two days. I am also committed again on Thursday. I had intended sending an email to you on Friday, after Steve Allen returns to the office. He and I have missed each other due to our schedules and not communicated much since the week before Thanksgiving.

Nevertheless, I understand that Mills-Reeve now has possession of the Jaeban U.K. computer and is able now to finally access the files. Steve Allen intends to review these files with Mr. Jaeban on Thursday, December 9, 2004 in order to determine whether there are any documents which have not be previously produced. I will also ask Steve to address your more specific questions early next week to the extent they can be answered prior to the review on the 9th. If necessary we can address this further on Friday when Steve and I are both available, but I wanted to reply as soon as possible and again acknowledge your patience. Regards.

Brian

Brian A. Sullivan, Esquire
WERB & SULLIVAN
300 Delaware Avenue, 13th Floor
P. O. Box 25046
Wilmington, Delaware 19899
For Courier: 19801
Telephone: (302) 652-1100
Facsimile: (302) 652-1111
E-Mail: bsullivan@werbsullivan.com <mailto:bsullivan@werbsullivan.com>

Wile, Kenneth E.

From: Brian Sullivan [bsullivan@werbsullivan.com]
Sent: Tuesday, December 07, 2004 12:00 PM
To: KWile@sidley.com
Cc: steven.allen@mills-reeve.com; anthony.minnis@mills-reeve.com; EMorton@ycst.com
Subject: Jaeban/BRAC

Dear Ken,

Not for the first time in this case, we take great exception to your e-mail of Friday, December 3, 2004. Perhaps most importantly, you have again attempted to instruct me on my "responsibility as Delaware Counsel." We are well aware of our responsibilities as Delaware Counsel. You have done this on numerous occasions in this case, not only in writing, but during some of our conversations over the months. Please do not let it happen again.

Next, simply because you send an e-mail with bolded statements such as "persistent failure to answer" and "persistent failure to produce", does not make it so. We strenuously disagree with your allegations.

We echo the points raises in Mr. Allen's response. Further, we note that your recent barrage of correspondence ignores the information provided to you that the computer is scheduled to be re-reviewed by Mills-Reeve on December 9, 2004.

Further, it seems to me that you continue to ignore Judge Case's comment at the last Hearing that the parties in this case hear and see only what they want to hear and see. Your recent e-mail is a further example of that phenomenon. Your correspondence also ignores your client's failure to do anything more than baldly assert that the relevant information is outside its control, notwithstanding its own clear ability to request and compel production of that information.

Further, when Rob Wilcox was in England, he asked you to confirm whether you have any objection to our contacting Terry Clark, potential witness. To date, you persist in ignoring this request. Accordingly, we intend to pursue such contact.

Further, if Judge Cases's decision comes down as we anticipate it will, we intend to move for fees in defense of the second unwarranted Motion. We also will be very aggressive in defending any third such unwarranted Motion and would seek fees. Please govern yourself accordingly.

Brian A. Sullivan, Esquire
Robert W. Wilcox, Esquire
WERB & SULLIVAN
300 Delaware Avenue, 13th Floor
P.O. Box 25046
Wilmington, Delaware 19899
For Courier: 19801
Telephone: (302) 652-1100
Facsimile: (302) 652-1111
E-Mail: bsullivan@werbsullivan.com

CONFIDENTIALITY NOTICE
UNAUTHORIZED INTERCEPTION IS PROHIBITED BY FEDERAL LAW [Electronic Communications Privacy Act of 1986, 18 U.S.C. 2701(a) and 2702(a)]
This message is being sent by Werb & Sullivan, a law firm. It is intended exclusively for the individuals and entities to which it is addressed. This communication, including any attachments, may contain information that is proprietary, privileged, confidential or otherwise

legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of this message.

Re: Jaeban

Page 1 of 2

Wile, Kenneth E.

From: Steve Allen [steve.allen@mills-reeve.com]
Sent: Tuesday, December 07, 2004 11:39 AM
To: 'Wile, Kenneth E.'
Cc: 'Brian Sullivan'; 'rdwilcox@mindspring.com'; 'emorton@wcst.com'; 'pcorr@sidley.com'
Subject: Re: Jaeban

Mr Wile:

As you very kindly copied me into your e-mail to Brian Sullivan I am sure that you would not object to my responding on Mr Jaeban's behalf.

First, having been at the receiving end of a succession of applications by your firm aimed at disposing of Mr Jaeban's claim without addressing its merits, your e-mail was received here with little surprise but with some disappointment. We had hoped that following the comments of Judge Case at the September 21st hearing that such tactics on the part of your firm would cease. Yet it is quite apparent based on our previous experience that your e-mail has been written as a precursor to yet another application.

Second, it is clearly inappropriate for you to criticise my client for lack of discovery in circumstances where the entirety of your client's discovery production consists of three lever arch files containing documents of little or no assistance in answering the detailed requests submitted by Jaeban UK Limited. I note that you have consistently failed to address this issue in correspondence even though my predecessor firm first raised it with your firm in June 2003. We note in particular that the computer records of BRACII remain unavailable to our client and that you refused my 12 August 2004 request to schedule a telephone deposition with the Records Custodian at BRACII in order that we might gain a better understanding of your efforts to respond to Mr Jaeban's document production request.

On the issue of my client's alleged "failure to produce documents", you have of course now had the opportunity of perusing all responsive documents held by my client. Indeed, I recall that part of your complaint at the September 21st hearing was the volume of documentation received by your firm. Having exhausted this argument I note that you now turn your attention to alleged failings on the part of my client to produce e-mails from the Jaeban computer.

I can confirm that the person who has most knowledge about the location of the Jaeban computer files is Mr Jaeban.

I can confirm that Wragge & Co assisted by PWC extracted computer files from the Jaeban server and that these have already been disclosed to you as part of an extensive document production. In view however of your request, my firm has obtained the computer of Paul Champken who was the Accountant at Jaeban UK for the material period. As Brian Sullivan informed you on Friday I intend to review the contents of this computer with Mr Jaeban on Thursday in order to identify whether it contains any relevant documents responsive to your request. If it does and these documents were not previously disclosed in Jaeban UK Limited's disclosure they will be promptly sent to you. In the meantime I would remind you that most of the material and responsive documents sought by you will be held on the Hemel computer in the possession of your client. Perhaps you would care to advise me of what steps have been taken by your firm to provide this server for inspection. I would also remind you that it is both your and your client's responsibility to make certain that all non-privileged requested documents have been provided.

Yours sincerely

Steve Allen
Partner

BA630

2/2/2005

Re: Jaeban

Page 2 of 2

Mills & Reeve
Tel: +44(0)121 456 8343
<mailto:steve.allen@mills-reeve.com>
<http://www.mills-reeve.com>

This email is confidential and privileged. If you are not the intended recipient please accept our apologies; please do not disclose, copy, or distribute information in this email nor take any action in reliance on its contents: to do so is strictly prohibited and may be unlawful. Please inform us that this message has gone astray before deleting it. Thank you for your co-operation.

Mills & Reeve Solicitors, offices at:

Birmingham: 54 Hagley Road, Edgbaston, Birmingham B16 8PE.
Cambridge: Francis House, 112 Hills Road, Cambridge CB2 1PH.
Norwich: 1 St James Court, Whitefriars, Norwich NR3 1RU.
London: Bankside House, 107-112 Leadenhall Street, London EC3A 4AF.

Mills & Reeve is regulated by the Law Society.

A list of Partners may be inspected at any of the above addresses.

Visit our web site at: <http://www.mills-reeve.com>

This message has been checked for viruses by the Mills & Reeve screening system.

BA631

2/2/2005

Wile, Kenneth E.

From: Wile, Kenneth E.
Sent: Wednesday, December 08, 2004 2:29 PM
To: Brian Sullivan (E-mail)
Cc: Rob Wilcox (E-mail); 'steve.allen@mills-reeve.com'; Corr, Patrick; Taylor, Phillip D.; Edmon L Morton (E-mail)
Subject: Jaeban UK Adversary Proceeding

Brian:

Thank you for that portion of Steve Allen's e-mail of yesterday (a) disclosing that it is Mr Champken's computer that is being reviewed and (b) stating that Ibrahim Jaeban is the witness most knowledgeable about Jaeban UK's computers

Unfortunately, neither your e-mail of yesterday nor Steve's addressed the question I now must ask for a fifth time: are there Jaeban UK computers or e-mail servers that are no longer available to be searched (and, if so, what became of them)? Please respond.

With respect to the accusations and threats in the two e-mails, I note that your prior e-mails thanked me for my patience on three separate occasions. I waited a full month after the second sanctions argument even to raise these issues on October 20, 2004. It is now 2½ months after the argument and 3½ months after Rob Wilcox and I began discussing the question of missing computers and e-mails -- which was first raised with Wragge & Co. in December 2003.

Finally, BRACII has not impeded your access to Terry Clark, a long-time friend of Mr Jaeban's, and does not seek to do so now.

Regards

Ken

Kenneth E. Wile
Sidley Austin Brown & Wood LLP
Bank One Plaza
Chicago, Illinois 60603
312-853-2081
312-853-7036 (fax)
kwile@sidley.com

Message

Page 1 of 2

Wile, Kenneth E.

From: Steve Allen [steve.allen@mills-reeve.com]
Sent: Thursday, December 09, 2004 3:07 AM
To: 'Wile, Kenneth E.'; Brian Sullivan (E-mail)
Cc: Rob Wilcox (E-mail); Corr, Patrick; Taylor, Phillip D.; Edmon L. Morton (E-mail)
Subject: RE: Jaeban UK Adversary Proceeding

Mr Wile:

Please have the courtesy to respond to the issues raised in my e-mail to you of Tuesday

Yours sincerely

Steve Allen
Partner
Mills & Reeve
Tel: +44(0)121 456 8343
steve.allen@mills-reeve.com
<http://www.mills-reeve.com>

-----Original Message-----

From: Wile, Kenneth E. [mailto:KWile@Sidley.com]
Sent: 08 December 2004 20:29
To: Brian Sullivan (E-mail)
Cc: Rob Wilcox (E-mail); 'steve.allen@mills-reeve.com'; Corr, Patrick; Taylor, Phillip D.; Edmon L. Morton (E-mail)
Subject: Jaeban UK Adversary Proceeding

Brian.

Thank you for that portion of Steve Allen's e-mail of yesterday (a) disclosing that it is Mr Champken's computer that is being reviewed and (b) stating that Ibrahiem Jaeban is the witness most knowledgeable about Jaeban UK's computers.

Unfortunately, neither your e-mail of yesterday nor Steve's addressed the question I now must ask for a fifth time: are there Jaeban UK computers or e-mail servers that are no longer available to be searched (and, if so, what became of them)? Please respond.

With respect to the accusations and threats in the two e-mails, I note that your prior e-mails thanked me for my patience on three separate occasions. I waited a full month after the second sanctions argument even to raise these issues on October 20, 2004. It is now 2½ months after the argument and 3½ months after Rob Wilcox and I began discussing the question of missing computers and e-mails -- which was first raised with Wragge & Co. in December 2003

Finally, BRACII has not impeded your access to Terry Clark, a long-time friend of Mr Jaeban's, and does not seek to do so now

Regards

Ken

BA633

2/2/2005

Message

Page 2 of 2

Kenneth E Wile
Sidley Austin Brown & Wood LLP
Bank One Plaza
Chicago, Illinois 60603
312-853-2081
312-853-7036 (fax)
kwile@sidley.com

Sidley Austin Brown & Wood LLP mail server made the following annotations on 12/08/2004,
02:28:28 PM

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

This email is confidential and privileged. If you are not the intended recipient please accept our apologies; please do not disclose, copy, or distribute information in this email nor take any action in reliance on its contents: to do so is strictly prohibited and may be unlawful. Please inform us that this message has gone astray before deleting it. Thank you for your co-operation.

Mills & Reeve Solicitors, offices at:

Birmingham: 54 Hagley Road, Edgbaston, Birmingham B16 8PE.
Cambridge: Francis House, 112 Hills Road, Cambridge CB2 1PH.
Norwich: 1 St James Court, Whitefriars, Norwich NR3 1RU.
London: Bankside House, 107-112 Leadenhall Street, London EC3A 4AF.

Mills & Reeve is regulated by the Law Society.

A list of Partners may be inspected at any of the above addresses.

Visit our web site at: <http://www.mills-reeve.com>

This message has been checked for viruses by the Mills & Reeve screening system.

2/2/2005

BA634

Wile, Kenneth E.

From: Brian Sullivan [bsullivan@werbsullivan.com]
Sent: Friday, December 10, 2004 8:49 AM
To: kwile@sidley.com
Cc: steven.allen@mills-reeve.com; anthony.minnis@mills-reeve.com; Robert D Wilcox
Subject: Jaeban/BRAC

Ken,

I understand and am informed that the review of the primary Jaeban computer commenced yesterday at Mills-Reeve. Steve Allen has indicated that he should be able to provide a report of the review by the end of next week and maybe sooner. I send this as a matter of courtesy and to keep you informed and do not anticipate the necessity of a response. It would be helpful if you would please respond to the information requested by Steve. Thanks for your consideration. Regards.

Brian A. Sullivan, Esquire
WERB & SULLIVAN
300 Delaware Avenue, 13th Floor
P.O. Box 25046
Wilmington, Delaware 19899
For Courier: 19801
Telephone: (302) 652-1100
Facsimile: (302) 652-1111
E-Mail: bsullivan@werbsullivan.com

CONFIDENTIALITY NOTICE
UNAUTHORIZED INTERCEPTION IS PROHIBITED BY FEDERAL LAW [Electronic Communications Privacy Act of 1986, 18 U.S.C. 2701(a) and 2702(a)]
This message is being sent by Werb & Sullivan, a law firm. It is intended exclusively for the individuals and entities to which it is addressed. This communication, including any attachments, may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of this message.

Exhibit F to Opposition

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
BRAC GROUP, INC., et al, Case No. 02-12152 (CGC)
(f/k/a Budget Group, Inc.) Jointly Administered
Debtors. March 10, 2004 (2 p.m.)
(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHARLES G. CASE, II
UNITED STATES BANKRUPTCY COURT JUDGE

FILED
2004 MAY -4 AM 10:37
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 THE CLERK: All rise . . . (microphone not
2 recording.)

3 THE COURT: Good afternoon. Please be seated.

4 MR. MORTON: Good afternoon, Your Honor. Ed Morton
5 from Young Conaway Stargatt & Taylor on behalf of the
6 debtors, BRAC Group, Inc., et al. Turning to the second
7 updated notice of agenda that was filed recently, Your Honor,
8 and turning to the matters that were listed as going forward,
9 we're happy to report that most of the matters on today's
10 calendar have either been adjourned or resolved, and it looks
11 like we only have one actual contested item going forward
12 today. Matter number 7, Your Honor is the motion of David
13 Burhman for relief from the automatic stay. That matter is
14 being adjourned, by way of brief background, Your Honor. As
15 Your Honor is aware, at this point in the case, many of the
16 liabilities of the debtors were assumed by Cherokee as part
17 of the asset stock sale that was conducted earlier in the
18 case. Judge Walrath, prior to your involvement in the case,
19 entered an order which provided modified relief from the
20 automatic stay for certain of the personal injury and other
21 tort claims that were clearly assumed by Cherokee, and
22 Cherokee actually consented to the entry of the order in that
23 regard. This particular claim is one that -- that the
24 debtors believe is contained on that order, and we are
25 adjourning the motion so that the claimant has time to

1 satisfy itself that -- that the relief it seeks has already
2 been granted by the Court. Moving to matter number 8, Your
3 Honor, that is the motion to strike certain portions -- I'm
4 sorry -- to strike the entirety of the Jaeban answer in the
5 adversary proceeding. That is the one remaining contested
6 matter for today, so I would propose that we take that up at
7 the end and allow the other uncontested matters to be
8 cleared. If that's acceptable to Your Honor.

9 THE COURT: That's fine.

10 MR. MORTON: Matters 9 and 10, Your Honor, are both
11 being adjourned on consent of the parties. I believe there
12 is one representation that counsel to Ms. Benner has to make
13 on the record for that to happen, and I'll cede the podium to
14 her.

15 MS. MILLER: Good afternoon, Your Honor. Kathleen
16 Miller on behalf of Anne Benner and other family members.
17 Ms. Benner and her family have the group petition tort claim.
18 Previously we did get relief from the Court prior to the
19 order that Mr. Morton just mentioned for them to proceed.
20 There appears to be a dispute between Cherokee and Budget
21 whether or not this was an assumed liability. The case is
22 proceeding in State Court, and that's why we filed our
23 adversary proceeding, to have a determination as to whose
24 liability it is. We really don't care, we just need to know
25 one way or the other before trial occurs in November. Some

1 things have been happening, and this issue may get resolved
2 consensually, and that's why we've agreed to adjourn the pre-
3 trial conference to next month. If not, then we can set a
4 scheduling order. With that, I agreed that we would make a
5 representation on the record -- and that's why we filed the
6 adversary proceeding here -- is that the issue of whether or
7 not the Benner claim was an assumed claim would be decided by
8 this Court, if it's not resolved. And there will be no
9 action taken in the State Court, discovery or any other
10 action, with regard to that issue. We won't take any
11 discovery, the issue won't be presented to the Court, the
12 State Court, that's all for this Court to determine if that's
13 necessary.

14 THE COURT: All right. Thank you.

15 MR. ANTOSZYK: Peter Antoszyk, counsel of the
16 Creditor's Committee, Your Honor. Just to follow up on those
17 comments. Just by way of information, we believe we've
18 reached resolution with Cendant on a whole host of issues.
19 This, the Benner claim, just being but a vital part of it,
20 and, therefore, we hope to be presenting to this Court a
21 resolution of an adversary proceeding pending between us and
22 the estates in the next week or so.

23 THE COURT: Thank you.

24 MR. MORTON: Your Honor, if there are no more
25 representations to be made on those matters, I believe that

1 takes us to matter number eight, which is the motion to
2 strike in the Jaeban proceeding.

3 THE COURT: Well before we get to that, do we need
4 to make any record at all on 1 through 6? Number 1 has been
5 resolved or will be withdrawn?

6 MR. MORTON: Your Honor, these -- most of the
7 matters pending here -- in matters 1 through 6, are motions
8 for relief from stay. In many instances they are either one,
9 subject to the still remaining and yet apparently close to
10 resolved matter between Cherokee and Budget as to whom the
11 responsible party would be, and thus whether or not we would
12 consent to relief from stay in that regard. Or, they are of
13 the second variety, which is the one I just described to Your
14 Honor earlier, where claimants are merely satisfying
15 themselves that that they indeed have the relief that they
16 have already -- that the Court has already granted them
17 relief and that they're moving forward. Thank you, Your
18 Honor.

19 MR. WILE: Good afternoon, Your Honor. Kenneth
20 Wile for plaintiffs with respect to the motion to strike,
21 and since we were last in front of the Court complaining of
22 the gamesmanship of the other side, I'm afraid we've
23 encountered even more in the form of what purports to be a
24 five thousand pound assignment of the counterclaims, but not
25 the defense, to Mr. Jaeban, the former principal of Jaeban

(U.K.) Limited. We take strenuous exception to that. We think that there is not a competent response on file, and by far the fairest, and certainly the fastest result, is to grant our motion. Turning first to simply where we stand procedurally. There is no opposition on file by any party in this action. Mr. Jaeban's opposition goes out of its way, for reasons that are touched on in our reply, to make it clear he's only appearing as assignee of Jaeban (U.K.). Mr. Jaeban, as far as I know, and we've been checking, has not filed a motion to intervene or even an appearance in this action. And under the case we've cited, and just as a matter of general common sense, if you want to appear in an opposing motion you need to intervene, subject yourself to the jurisdiction of the Court and make it fair. That simply hasn't happened. Jaeban (U.K.), contrary to the Court's instruction at our last hearing in Phoenix, and that direction is in fact noted in Mr. Jaeban's opposition, was to have filed by Monday, February 23rd. There was no response from Jaeban (U.K.) at all. So we think by far, the easiest and for that matter the fairest result is simply to dismiss this and not have to worry about the myriad issues that I -- to which I now have to turn. I don't want to suggest by the number of issues that there is any justice in this case proceeding, because all of them, in fact, are further reasons why this ought to all come to an end, finally in the last

1 hundred days after we last had any cooperation or
2 participation by the defendant and counterclaim plaintiff in
3 this action. Turning quickly, and I don't want to
4 recapitulate too much what's in our reply, Mr. Jaeban stands
5 in the shoes of his assignor. That's black letter law under
6 the law of the United Kingdom, and we cited a case for that.
7 We all know that it's black letter law over here. There's
8 nothing about this case, in our view, that makes that any
9 different, and more to the point, since the principal
10 question is probably under U.K. law, we have submitted an
11 affidavit from Mr. Core, who is a solicitor, practices in
12 this area in the United Kingdom. Mr. Jaeban, for whatever
13 reason, did not submit an affidavit from his solicitors, who
14 I gather are now representing both him and Jaeban (U.K.), an
15 interesting situation I would think. And the law is he
16 basically is stuck with the misconduct of Jaeban (U.K.),
17 which he does not dispute, and really there's not much point
18 of it, because we've been discussing it in the last few
19 hearings. If that's not sufficient in and of itself -- Your
20 Honor, I'm sorry, I should point out there's really no effort
21 in his opposition to explain why he should be free of what
22 his assignor did. If that's not sufficient in and of itself,
23 then I'd like to quickly run through the six coolest factors,
24 and again, I want to avoid going into too much detail. We've
25 covered personal responsibility before, but I would like to

1 detail the prejudice to my clients, which is by no means
2 ameliorated by this five thousand pound assignment. There's
3 \$4.5 million in escrow. And the clock continues to tick.
4 Somewhat analogously there's a confirmation hearing due to
5 occur on April 7th. We are nowhere near the resolution of
6 this action. In fact, the assignment makes it all too likely
7 this will become a truly protracted proceeding. In honor of
8 our friends from the United Kingdom, I'm inclined to mention
9 Jarndice (phonetical) and Jarndice. It won't take quite that
10 long, but it's clearly going take much longer than it would
11 have before. We've already had to spend money on motion
12 practice. We're now stuck with the following lovely
13 situation in which in order to get discovery from the other
14 side, if in fact they're going to give it to us, we have to
15 rely on a cooperation clause. The cooperation clause is with
16 Jaeban (U.K.) and its receivers, and I would respectfully
17 submit to the Court that if Jaeban (U.K.) was willing utterly
18 to disregard this Court's orders repeatedly and to disregard
19 the Court rules, I suspect that Mr. Jaeban, even if he has
20 the best of intentions, would have no better luck than we've
21 had heretofore. The amount of procedural confusion that we
22 now face by virtue of this somewhat phony assignment only
23 makes matters worse, and there I would like to read into the
24 record footnote three of the opposition. In the event that
25 the Court denies plaintiff's motion -- again these are Mr.

1 Jaeban's words -- Jaeban requests -- and I assume that's Mr.
2 Jaeban -- requests that the scheduling order be extended and
3 modified. No particular time given. Further, the
4 distinction between the claims against Jaeban Limited, which
5 is probably headed from receivership to insolvency, and the
6 claims of the assignee, Mr. Jaeban, will have to be made.
7 Your Honor, I've tried with the best of faith to figure out
8 what exactly that means. I don't know. I don't look forward
9 to our joint efforts to try to resolve what that means. And
10 beyond that, the number of additional motions we'll have to
11 face, starting with the fact that the assignment, as we've
12 argued and shown in our reply, is in fact invalid. And I
13 find it somewhat surprising, given that we are up here on a
14 sanctions motion where bad faith is already at issue and not
15 in any meaningful sense denied that Mr. Jaeban chose not to
16 raise the existence of the three, count them, three anti-
17 assignment provisions in the umbrella agreement, and the
18 licensing agreement that existed between Jaeban (U.K.) and
19 Mr. Jaeban, for that matter, and plaintiffs. It's simply not
20 mentioned at all. It's left to us to bring up the issue.
21 The language is clear. We have Mr. Core's affidavit,
22 attesting that, in fact, the Court in the United Kingdom
23 would, in fact, enforce those provisions, and we've heard
24 nothing from Mr. Jaeban, and I submit the time to have heard
25 that would have been in his opposition, and not in any

1 further proceedings following this hearing. Returning to the
2 coolest factors dilatory, and as we've discussed far too many
3 times, because we've had to, not only has Jaeban's bad faith
4 -- Jaeban (U.K.)'s bad faith a matter of public record, but
5 Mr. Jaeban is not entirely without fault in this as well.
6 Not least because he's the one who made the decision not to
7 pay us the three hundred and twenty eight thousand pounds
8 which we were owed back in May of 2003 and which now stands
9 out there as a turnover order with which Jaeban (U.K.) has
10 told us they will not comply. And as an aside, it's not
11 clear to me how this case can ever go forward unless there is
12 compliance. We're also troubled that Mr. Jaeban didn't
13 disclose the fact of his personal guarantee. It remains our
14 view that that's an action that should take place in the
15 United Kingdom where his assets are located, but that has all
16 kinds of implications if, in fact, we're going to go forward
17 here. You know, a key determination in cases like this tends
18 to be, you know, is there an effective remedy? Well, Mr.
19 Jaeban's response is, well you have the three hundred and
20 twenty eight thousand pound turnover order. And then we turn
21 to Exhibit D to our reply which is the letter from his
22 solicitors telling us that in course there will be no
23 compliance with the three hundred and twenty eight thousand
24 dollar immediate turnover order, because there are
25 insufficient assets. And as we've noted in our reply, when

1 there really is no financial wherewithal, or no ready
2 financial wherewithal on the other side, no remedy, short of
3 dismissal, is effective. Finally, on meritiousness of
4 claim, I mean, usually that's a neutral factor, because
5 usually, as one of the cases points out, if you haven't pled
6 the elements sufficiently, the claim would have been gone on
7 that basis. Here, by virtue of the assignment, we now have
8 the question whether Mr. Jaeban has standing. There are the
9 three anti-assignment provisions. It only takes one,
10 actually, because the two -- the two smaller ones that are
11 for much less than the three million pound claim, as to which
12 there will now be a default, because Jaeban (U.K.) is not
13 here to answer in its own name. And it just sort of points
14 to the overall silliness towards which we were headed unless
15 this is brought rather to a quick end. And last, but not
16 least, we did mention deterrence. And we're troubled that
17 there's been an attempt by both sides of the assignment
18 transaction to evade the consequences of what's already
19 occurred here. We don't think that it's appropriate for
20 parties located anywhere in the world to simply say that the
21 orders of this Court and the rules of Court are of no import,
22 and if trouble looms, they can escape liability with an
23 assignment for a token amount and an indemnity. We have just
24 a general concern that, you know, an assignment of this type,
25 throwing this up at the last minute, that the Court ought to

1 be sanctioning -- or rather, the Court should not be
2 sanctioning a last minute assignment as a way of avoiding
3 sanctions. And the Supreme Court in the NHL decision, which
4 both parties have cited, have stress deterrents, and the fact
5 that merely a promise of a brighter day is not a sufficient
6 reason when there are ample reasons in the record for
7 granting a motion like this, and that, respectfully, is what
8 we believe ought to occur here. Thank you.

9 THE COURT: Do we have counsel here for Jaeban?

10 MR. SULLIVAN: Yes, Your Honor. Good afternoon,
11 Your Honor. Brian Sullivan, Werb & Sullivan, for Mr. Jaeban,
12 the assignee of Jaeban (U.K.) Limited. And on the phone,
13 Your Honor, from England is Mr. Steven Allen from the Wragg
14 and Company law firm. I hope you can hear me okay. And he
15 has previously addressed the Court, Your Honor. We filed our
16 response, Your Honor, on March 1st to the motion to strike.
17 Debtor's counsel has vociferously argued to strike the claims
18 of Jaeban, but we know, Your Honor, from the governing
19 precedent that dismissal is a drastic sanction that is
20 reserved for extreme cases, Your Honor. This is not one of
21 those cases, and we believe that dismissal is not
22 appropriate. The debtor in this case has thrown everything
23 at Jaeban, including the kitchen sink, in its zealous efforts
24 to get the case dismissed, Your Honor. But what the debtor
25 fails to acknowledge, and we believe Your Honor will, is that

1 the delay in this case was caused by intervening
2 circumstances, circumstances that were beyond Jaeban's
3 control, Your Honor.

4 THE COURT: Now, when you're talking about Jaeban,
5 I want to be clear here. You're representing, I take it, Mr.
6 Jaeban. When you're talking about Jaeban as --

7 MR. SULLIVAN: Well --

8 THE COURT: -- Mr. Jaeban, or Jaeban (U.K.), or
9 some other Jaeban entity?

10 MR. SULLIVAN: I'm referring to Mr. Jaeban. I will
11 try to use that when I'm referring to him, and Jaeban (U.K.)
12 when I'm referring to Jaeban Limited, but sometimes I think
13 that their interests are probably identical since he is the
14 assignee, Your Honor.

15 THE COURT: Well, let's -- let's just talk before
16 you get too far into this --

17 MR. SULLIVAN: Sure.

18 THE COURT: -- about the assignment.

19 MR. SULLIVAN: Okay. Sure.

20 THE COURT: Putting aside, for the moment, and just
21 for the moment, these issues of the effectiveness of the
22 assignment because of the contractual anti-assignment
23 clauses, what is your view of what was actually assigned?
24 And what was not assigned? What does your client, Mr.
25 Jaeban, hold, and for what is he potentially liable?

1 MR. SULLIVAN: I might ask Mr. Allen, if he could,
2 Your Honor, to address that, but I believe he has all of the
3 rights with regard to the claims and the counterclaims that
4 Jaeban (U.K.) Limited had. It may be a question, Your Honor,
5 of English law that I haven't had a chance to get to yet.

6 THE COURT: Well, what about --

7 MR. SULLIVAN: As to --

8 THE COURT: -- what about the issue with regard to
9 the escrow? What, if any, rights or obligations does he have
10 with regard to the escrow?

11 MR. SULLIVAN: I believe he has the same claims to
12 the escrow that Jaeban (U.K.) did, Your Honor, by virtue of
13 the assignment.

14 THE COURT: Well, and the debtor here seeks -- has
15 claims against the escrow.

16 MR. SULLIVAN: Okay.

17 THE COURT: What I'm trying to understand is --
18 let's say I were to let him come into the case as assignee.

19 MR. SULLIVAN: Yes, sir.

20 THE COURT: And on the merits I were to decide in
21 favor of the debtor. What would be the debtor's remedy at
22 that point?

23 MR. SULLIVAN: Maybe Mr. Allen again could help me,
24 because I have only been involved for several weeks and have
25 focused primarily on this motion. But I believe that if you

1 were to deny Mr. Jaeban's claims and award the debtor its
2 claims, that it would be able to get control of the escrow
3 account but maybe Mr. Allen could back me up on that. I
4 don't think that the --

5 MR. ALLEN (TELEPHONIC): Your Honor --

6 MR. SULLIVAN: Let me just preface my comment, Mr.
7 Allen.

8 THE COURT: Just hold on -- just hold on a second,
9 Mr. Allen. Just a minute.

10 MR. SULLIVAN: Sorry. That was my fault. But I
11 just wanted to preface it that we don't intend, nor do we
12 think that the assignment, Your Honor, is going to interfere
13 with Your Honor's ability to deal effectively with this case,
14 and we'll do everything within our power to make sure that it
15 doesn't.

16 THE COURT: Well, I understand that. I understand
17 your offer of good faith. What I'm trying to understand is

18 --

19 MR. SULLIVAN: Why don't -- go ahead.

20 THE COURT: What the debtor wants, to quote from
21 its motion, is to strike the debtor's answer, affirmative
22 defenses, and counterclaims in order to release from escrow
23 the \$4.5 million of plaintiff's funds held hostage by
24 misconduct of defendant Jaeban (U.K.) Limited. Okay? So,
25 what they're seeking to do is to get the \$4.5 million. What

1 I'm trying to understand is the party or the entity that I
2 arguably have in front of me or that you're trying to get in
3 front of me, which is Mr. Jaeban as assignee of Jaeban (U.K.)
4 Limited, is that party, Mr. Jaeban as assignee, able to
5 deliver the \$4.5 million to the plaintiff, assuming, number
6 one, that I were not to strike it at this point, and number
7 two, that I were to grant your standing, and number three,
8 that you would eventually intervene, and number four, that
9 the anti-assignment clauses were not effective, and so on, at
10 the end of the day, if the debtor is correct on the merits,
11 do you deliver the \$4.5 million to the debtor?

12 MR. SULLIVAN: I believe we could, Your Honor.
13 That's my understanding of the assignment. And I -- frankly,
14 I think that the debtor is making more of the assignment than
15 needs to be made. We've looked at Federal Rule 25, which
16 talks about the assignment of causes of actions, and I think
17 it controls. And it simply says --

18 THE COURT: Controls over a contractual limitation
19 on assignment?

20 MR. SULLIVAN: Well, that's a separate matter, Your
21 Honor. But just in terms of the validity of the assignment,
22 and the party before you, it simply says that the assignee
23 stands in the shoes of the assigning party, and that the
24 Court may require a motion to substitute, but I do not think
25 it's mandatory.

1 THE COURT: Well, maybe I didn't understand this
2 very well. But I -- I read the assignment as transferring to
3 Jaeban -- Mr. Jaeban as assignee certain rights without
4 necessarily transferring certain obligations. And that's
5 what I'm trying to understand, is whether or not the
6 obligations went with the rights under the assignment that
7 was executed. One of the obligations being that in the event
8 of an adverse ruling to turn over, without further ado, the
9 \$4.5 million escrow.

10 MR. SULLIVAN: Again, I believe that the answer to
11 that is in the affirmative, but maybe we can hear what Mr.
12 Allen has to say, Your Honor.

13 THE COURT: Do you have a point of view on that Mr.
14 Allen?

15 MR. ALLEN (TELEPHONIC): Your Honor, on that issue,
16 it's my understanding that . . . (microphone not recording)
17 was intended to ensure that Mr. Jaeban would be in a position
18 to stand effectively in the shoes of Jaeban (U.K.) Limited
19 with respect of, certainly, it's obligations. I would need
20 to take advice from colleagues on the specifics in relation
21 to that.

22 THE COURT: Well, we are today at a hearing which
23 has presented the question whether or not the answer of
24 Jaeban (U.K.) and it's affirmative defenses and counterclaims
25 should be stricken, for all purposes. The defense that's

1 being presented against that motion is that now we have Mr.
2 Jaeban here standing in the shoes of the defendant, Jaeban
3 Limited, that it really wasn't his fault, that it was the
4 intervention of the administrative receivership that caused
5 all of the delays and so on, and that now he basically is
6 ready to proceed. Now, as I understand that's kind of where
7 we are today.

8 MR. SULLIVAN: Correct, Your Honor.

9 THE COURT: And that's their basis of the defense.
10 Now, I just asked what I thought was a direct question, which
11 is, Can Mr. Jaeban deliver, if he is unsuccessful in his
12 defense, if I were to allow it to continue? And the second
13 question is demonstrate that to me. And what I've gotten,
14 respectfully, from both counsel is it's my understanding that
15 that was the intention of this. Which is not much, frankly,
16 on what seems to me to be a pretty important question. So,
17 that's why I'm asking the question as directly as I can.

18 MR. SULLIVAN: Might we suggest, Your Honor, if we
19 cannot answer it now, that we can answer it after argument
20 today.

21 THE COURT: Well --

22 MR. SULLIVAN: If that's --

23 THE COURT: You know, I thought -- you know, I
24 thought today was the O.K. Corral, frankly. And, you know,
25 the guns were blazing today, and that we were --

1 MR. SULLIVAN: They are, Your Honor, but we tried
2 to get up to speed on a relatively complex case as quickly as
3 we could, probably less than two weeks, and we focused on
4 filing the answer to the motion. But this is a question that
5 we didn't realize that the Court was going to have such
6 interest in, and while I believe the answer is yes, we would
7 certainly be willing to expediently, post argument --

8 THE COURT: I guess here's what I'm trying to under

9 --

10 MR. SULLIVAN: Okay.

11 THE COURT: And I am asking, and I want somebody to
12 tell me, that if I misunderstand what is going on here,
13 because I am not as intimately involved, obviously, in this
14 as any of you, but if I misunderstand, I want somebody to
15 tell me --

16 MR. SULLIVAN: We'll do our best.

17 THE COURT: -- about what I -- to restate the
18 obvious. The administrative receivers for Jaeban (U.K.) have
19 up until this time ignored what's been going on. They've
20 chosen to do that. They now have chosen, instead, to give an
21 assignment of something to Mr. Jaeban in consideration of a
22 relatively modest payment and told Mr. Jaeban he can go out
23 and assert the counterclaims, defend the action, and proceed.
24 Now, as far as I can tell, that still does not affirmatively
25 put Jaeban (U.K.) or the administrative receivers in a

1 position where they are subject to jurisdiction such that if
2 there was an order saying deliver the \$4.5 million, that they
3 would do so. And so I say --

4 MR. SULLIVAN: I believe --

5 THE COURT: -- does that mean that Mr. Jaeban is
6 now the one who's in the position to do so? And what I get
7 is an answer that says, It's my understanding that that was
8 the intention. Now it doesn't strike me as an unusual
9 question, because what you're trying to do is to stop what
10 would otherwise be, you know, to use a metaphor, a stake in
11 the heart, by coming in and saying, Well, you don't have to
12 put a stake in the heart, because here we are. And I'm
13 trying to understand who is here and with what. Now --

14 MR. ALLEN (TELEPHONIC): Well, Your Honor, if I
15 could make the comment. I'm not familiar with U.S. law on
16 the specific issue of what Jaeban (U.K.) would need to do to
17 release the 4.5 million, and, therefore, I can't answer
18 questions as to what Mr. Jaeban can do. All I can say is
19 that my understanding, Your Honor, is that Mr. Jaeban can do
20 exactly what Jaeban (U.K.) Limited could do. If I understood
21 what Jaeban (U.K.) Limited's responsibilities were in
22 relation to what they had to do administratively to release
23 the 4.5 million in the event of the debtor's success, then I
24 could answer the question.

25 THE COURT: Well, let me ask you this question.

1 Where is this escrow? Describe the escrow to me. Do you
2 know, Mr. Allen? I see Mr. Wile standing up. He wants to --
3 he wants to educate me.

4 MR. WILE: Yes, Your Honor. I think there's a key
5 fact here I need to explain.

6 MR. SULLIVAN: Sure. Please.

7 THE COURT: All right. I'm going to let Mr. Wile
8 talk for a moment. So, I'm saying, if I'm misunderstanding
9 something, I want somebody to tell me.

10 MR. WILE: That's why I was bobbing up and down,
11 Your Honor. Not something I ordinarily do in an argument.
12 I'll try to be uncharacteristically brief. The \$4.5 million
13 escrow is held at the request of the plaintiffs, the debtors,
14 at a bank in Chicago to compensate Mr. Jaeban for the claimed
15 4.5 million US in damages that are there. And all he need
16 simply do is lose and that gets released. But I took the
17 Court's question to be what becomes of our affirmative claim,
18 and I took some discomfort, obviously excruciatingly shared
19 by us, that Mr. Jaeban gets all the benefits and none of the
20 burdens. We have a three million dollar -- I'm sorry -- a
21 three million pound, it's a 5.4 million claim against Jaeban
22 (U.K.). I think it's fair to assume, and I'd love to hear
23 otherwise, that Mr. Jaeban wants nothing to do with that
24 entire liability. He has enough on his hands with the
25 guarantee that he has given. I do not understand him to have

1 assumed that liability. The deed of assignment is an
2 interesting document, somewhat difficult to read.

3 THE COURT: Yeah. Let's -- you are getting --

4 MR. WILE: Right, exactly --

5 THE COURT: -- too long. Let me just --

6 MR. SULLIVAN: -- but that would be the complete
7 explanation.

8 THE COURT: Let me just then back up a little bit.

9 MR. WILE: Okay.

10 THE COURT: There's four and a half million dollars

11 --

12 MR. WILE: Right.

13 THE COURT: -- held in an escrow in a bank in
14 Chicago, a bank in the US.

15 MR. WILE: Yes.

16 THE COURT: Did you say Chicago?

17 MR. WILE: I believe they're the same, Your Honor.

18 THE COURT: I know. They're not co-terminus, but
19 they do -- the one does include the other.

20 MR. WILE: Only in our minds, Your Honor.

21 MR. SULLIVAN: That's right.

22 THE COURT: And that's there -- and that's
23 basically the debtor's money --

24 MR. WILE: Yes.

25 THE COURT: -- that's being held, in effect, to

1 protect claims that were brought against it by Jaeban. In
2 addition to that, you have your claim for \$3 million, plus
3 you have this three hundred and eighty four thousand dollar
4 -- thousand pound turnover order that was entered last time
5 --

6 MR. WILE: Correct.

7 THE COURT: -- that would -- that are claims
8 against, affirmatively against Jaeban (U.K.); right?

9 MR. WILE: That's correct, Your Honor.

10 THE COURT: So, in the best of all worlds, the
11 debtor gets its four and a half million dollars back, and
12 gets a judgment for \$3 million, or pounds, whichever it is,
13 against Jaeban (U.K.), and gets paid. So, it puts its four
14 and a half million that was its money and it gets three
15 million more.

16 MR. WILE: That would be wonderful, Your Honor, but
17 since we have been told by Wragg and Company --

18 THE COURT: They say -- I'm talking about that's
19 the best of all worlds.

20 MR. WILE: When this case began, yes, absolutely.

21 THE COURT: And what you say you have been told by
22 the solicitors is, you know, get all the judgments you want
23 against us, because --

24 MR. WILE: Right.

25 THE COURT: -- we don't have any money, and we're

1 not going to pay you.

2 MR. WILE: Yeah.

3 THE COURT: Or stand in line, or something similar
4 to that.

5 MR. WILE: Exhibit D to our reply, Your Honor.

6 THE COURT: Right. So, as far as the release of
7 the escrow is concerned, that's not something, you're telling
8 me, over which Jaeban (U.K.), or anybody, has any control; or
9 is it? For example, does the escrowee need some kind of
10 affirmative letter from solicitors for Jaeban (U.K.) saying
11 you can now release it, or does it simply need an order of
12 the Court saying, You lose, release the money?

13 MR. WILE: Well, prior to the assignment, a letter
14 from Jaeban (U.K.) might be fine, but as someone who
15 represents banks for a living, I can imagine some discomfort
16 because of the confusion that's been created here. So to be
17 entirely candid to the Court, it may well be that an order
18 would be necessary or a waiver by all the appropriate
19 parties.

20 THE COURT: But an order would do it.

21 MR. WILE: An order would certainly do it. Yeah.

22 THE COURT: Okay. All right. Thank you.

23 MR. SULLIVAN: And I think, Your Honor, if I --

24 THE COURT: I guess my -- The question I was trying
25 to state earlier was I didn't understand the mechanics of the

1 escrow, and I thought maybe there was something that Jaeban
2 had to do. But there is an affirmative claim. Now, is Mr.
3 -- Mr. Jaeban is not assuming that liability; correct?

4 MR. SULLIVAN: That's probably another question for
5 Mr. Allen, sir. If you don't mind.

6 THE COURT: He's not assuming the liability. Is
7 he, Mr. Allen?

8 MR. ALLEN (TELEPHONIC): Your Honor the . . .
9 (microphone not recording) point two of the agreement says
10 that the assignee agrees to fully and effectively . . .
11 indemnify the assignor, and each of the receivers . . . and
12 expenses . . . the assignor in respect to . . . the claims.
13 That's clause 2.2 of the agreement.

14 THE COURT: So that indemnity would only arise to
15 the extent that there was a payment made by the receivers; is
16 that right?

17 MR. ALLEN (TELEPHONIC): Um --

18 THE COURT: In other words, if a judgment -- let's
19 assume a judgment of three million pounds was rendered
20 against Jaeban (U.K.), and that was sought to be enforced and
21 no payments were actually made. There was a judgment, but no
22 payments were actually made. Then, they would have suffered
23 no loss, and there would be no obligation to indemnify the
24 receivers. It's not as if, however, Mr. Jaeban is taking it
25 and saying, If we lose, you can come after me personally.

1 He's not doing that; is he?

2 MR. ALLEN (TELEPHONIC): Your Honor, I'd need seek
3 clarification of the terms of this -- of this wording. It's
4 my understanding that Mr. Jaeban was going to stand in the
5 shoes of Jaeban (U.K.) Limited. If I could stand down for
6 ten or fifteen minutes, I could seek clarification of that.

7 THE COURT: Well, let me see -- where is --

8 MR. SULLIVAN: The assignment is attached to the
9 plaintiff's reply, Your Honor.

10 THE COURT: Right. I'm just trying to -- need of
11 assignment of claim. Well, as I read this, what is going on
12 is that for five thousand pounds plus ten percent of any
13 affirmative recovery, Mr. Jaeban is getting an assignment of
14 the right to assert the claim against BRAC or BRAT, whoever
15 it is against and has agreed to indemnify the receivers to
16 the extent they suffer any loss. And that's about the sum
17 and substance of it. And so, he has the right to pursue the
18 claim, but to the extent there is a damage award, if they
19 have to pay it, they can seek it back from him, but I don't
20 see where there is any liability that he has undertaken vis-
21 a-vis the debtor directly. That's how I read this. I don't
22 know if that's --

23 MR. SULLIVAN: I understand the Court's question.

24 THE COURT: Is that -- okay. So I think we've beat
25 that subject enough. What about the anti-assignment --

1 MR. SULLIVAN: But I don't know that that's fatal
2 to our position, Your Honor.

3 THE COURT: What about the anti-assignment
4 provisions in the contract? In which --

5 MR. SULLIVAN: Again, Your Honor, the -- those were
6 only raised in a reply which we effectively read for the
7 first time Monday morning. But I will say that it's my
8 understanding that -- and I believe it's acknowledged in the
9 debtor's motion that the contracts have been assigned to Avis
10 or Zodiac. So I don't think that the debtor really has any
11 standing to raise the issue of breach of contract if they're
12 no longer a party to the contract, Your Honor.

13 THE COURT: Well, except that the claims that are
14 being asserted here are claims arising under that same
15 contract, aren't they?

16 MR. SULLIVAN: That's true. And maybe Zodiac would
17 have the opportunity to complain, if they chose, but I don't
18 think the debtor does, Your Honor.

19 THE COURT: All right. Well we'll see what the
20 debtor has to say about that. Go ahead, I interrupted you
21 some time ago.

22 MR. SULLIVAN: That's fine, Your Honor. And some
23 of the facts that you've obviously read in papers and thought
24 about this and I'll try to move through some of the more
25 mundane points of the argument. I also was going to make the

1 Court aware that the insolvency of Jaeban (U.K.) was
2 obviously not a trivial matter for Mr. Jaeban, who is the
3 principal of the company. It's an unfortunate fact of life
4 for him. This was his business, and I believe that the
5 receivership, and the probable insolvency is in no large --
6 no small part, rather, due from the fallout of the Budget
7 insolvency. So, this is a serious matter for Mr. Jaeban, and
8 not something that he is taking lightly, Your Honor. Your
9 Honor, we set forth in our papers all of the action that
10 Jaeban (U.K.) took prior to the appointment of a
11 receivership. That includes the filing of the answer and the
12 counterclaim, responding to the first request for the
13 production of documents, responding to the second request for
14 production of documents, filing the initial disclosures, and
15 several without prejudice meetings. Not insignificantly,
16 Your Honor, Jaeban (U.K.), prior to the receivership,
17 employed both Wragg and Company and the independent auditing
18 firm of PricewaterhouseCoopers in order to review dozens and
19 dozens of boxes of files in order to comply with requests for
20 production of documents. And in fact, twenty five hundred
21 pages of documents were produced by Jaeban (U.K.) prior to
22 the receivership. I believe it took three days for the
23 representatives of Wragg and PricewaterhouseCoopers in order
24 to make that disclosure. It was only after the receivership,
25 Your Honor, that Jaeban was temporarily unable to participate

1 in these proceedings, and the delay, Your Honor, was
2 relatively short, it was a month at most, maybe two months
3 after significant litigation was already in place. Also,
4 Your Honor, the papers have brought forth that -- what
5 happened is that the secured creditor of Jaeban is the
6 charging party who placed Jaeban (U.K.) into receivership,
7 and the receivers, Your Honor, have a primary duty to look
8 out only for the creditor that they're trying to collect the
9 debt for. So the receivers, really, I don't believe they had
10 any disrespect for this Court. I think the costs were a
11 concern, but I don't believe that this proceeding was the
12 focus of their duties or their responsibilities.

13 THE COURT: Well, that's fine. I mean, they can
14 focus on whatever they want to, but I mean, there are
15 consequences when you don't focus. And that's the point of
16 what the plaintiff is trying to say here.

17 MR. SULLIVAN: I think that the analogy that I drew
18 in our papers, Your Honor, was that, you know, the debtors
19 filed for Chapter 11, they get a six to an eight month
20 breathing spell, and here we have a receivership appointed,
21 and we have a one month delay, and certainly no intentional
22 misconduct on the part of Mr. Jaeban or Jaeban (U.K.) in
23 complying with this Court's orders, and I just tried to
24 enunciate everything that they had done prior to the
25 intervention of the receivership.

1 THE COURT: How do you calculate this only as a one
2 month delay?

3 MR. SULLIVAN: I believe that there was a hearing
4 on January 12th and another one on February 4th, and at the
5 February 4th hearing, Your Honor, that is when you ordered
6 that Jaeban had to obtain new Delaware counsel by February
7 23rd, and respond to the motion. Which, as soon as they
8 could hurry up and get the assignment taken care of -- which
9 was rushed, I'm sure, under the circumstances, in order to
10 comply -- we did -- we contacted Mr. Wile, and he was good
11 enough to give us an additional one week. But for all
12 intents and purposes, Jaeban complied -- Mr. Jaeban complied
13 with your order, Your Honor, that he obtain new Delaware
14 counsel by February 23rd and that he file his response by
15 then. If I may, Your Honor, there are a couple of points
16 that I think are important. First of all, back at the
17 January hearing, you know, the debtor keeps complaining about
18 what Jaeban (U.K.) didn't do. There are some things that the
19 debtor hasn't done in this action as well, and I think you
20 made note of them at the January 12th hearing. I think most
21 important of those was that in order and before the debtor
22 seek a motion for sanctions, that it file a motion to compel.
23 You directed the debtor to do that, the debtor's counsel
24 agreed that they would do that, and they haven't filed a
25 motion to compel. And if they did file a motion to compel,

31

THE COURT: Well, what I understood from the papers was that the Jaeban side took the position that, Why do we have to bother with depositions because this is not something we do in England. Until we exchange witness statements, we don't get to the point where we really ever talk about depositions.

MR. SULLIVAN: That was a point that was raised, Your Honor, and I think that in conjunction with the receivership and the confusion and Wragg and Company worried about whether they were going to get paid, because of the

1 receivership, that some communications broke down. Wragg's
2 initial impression was, you know, What do you mean
3 depositions? We don't know what they are. And I just
4 believe that that's when communications broke down. There
5 was -- you know, Tom Briggs at Morris Nichols has been
6 cooperative with us in the transition of this case, Your
7 Honor. He holds no animosity towards his former client, and
8 his motion was filed, I believe, on January 5th, and granted
9 on January 12th. So that was a very quick exit for the
10 former attorneys. Again, a lot happened quickly, Your Honor.
11 The transcript that I referred to Your Honor, where Your
12 Honor directed the debtor to file was on page 37 and 38, and
13 I won't read it to the Court, but -- I also mentioned how we
14 have complied with the order of February 23rd to appear and
15 file the response. We also mentioned, Your Honor, how the
16 debtor has already had the benefit of the granting of a
17 partial summary judgment motion, which, in effect, was a
18 sanction that was previously entered. And if we're talking
19 about prejudice, I think there's very little prejudice for
20 the debtor here. The escrow's been there, I believe, for one
21 year in accordance with Judge Walrath's order. And a month
22 or two delay, I think the consequence is minimal to the
23 debtor in terms of actual prejudice. The prejudice to Mr.
24 Jaeban has been significant. He's had to pay new counsel to
25 get up to speed quickly on a fairly complicated case and also

1 to respond to a motion for sanctions that we don't think is
2 appropriate. And those costs are not insignificant to Mr.
3 Jaeban, Your Honor. So we believe that Mr. Jaeban is already
4 suffering enough at the hands of the debtor. I was going to
5 quickly just go through some of the Boulis (phonetical)
6 standards, Your Honor, just very briefly. The most important
7 one where I think the debtor does not meet its burden has to
8 do with the extent of personal responsibility, either by the
9 party or their attorneys. And that's the primary point of
10 the Boulis case. Neither Mr. Jaeban nor Jaeban (U.K.) has
11 any personal responsibility in this matter, for this short
12 delay, Your Honor.

13 THE COURT: I think the debtor's position on that
14 -- and I hear your response -- is that all he holds at this
15 point is an assignment of whatever the interest was of Jaeban
16 (U.K.), which was in the hands of the receivers. So that,
17 you know, he's not a holder in due course, in a sense. He
18 doesn't take it washed away from whatever claims or defenses
19 may exist because of that. So, he is saddled with whatever
20 misdeeds they may have done.

21 MR. SULLIVAN: But Jaeban (U.K.) had no misdeeds.
22 It was complying up until the appointment of the
23 receivership, and Mr. Jaeban has complied as soon as he got
24 the assignment. So if there are any misdeeds and any delay
25 it was only caused by the receiver, Your Honor. And I don't

1 think it would be fair to saddle Mr. Jaeban, the assignee,
2 with the equivalent of his creditors. It was really the
3 creditor -- the receiver is the equivalent of the creditor --
4 and the creditor has very little interest in this proceeding.
5 To saddle the assignee with that alleged bad faith I don't
6 think is fair, Your Honor.

7 THE COURT: Okay. I understand that point.
8 Anything else?

9 MR. SULLIVAN: Just the other standards, Your
10 Honor. There's been no bad faith or no willful misconduct.
11 Just quickly some of the -- I'd like to tell you what we can
12 do, Your Honor, in order to move this case along. We're
13 willing to agree to a deposition schedule that's acceptable
14 to the Court and to the debtor. We would probably like to
15 take some of our own depositions. We're willing to -- I've
16 recommended to Wragg and Company that we respond to some of
17 the documents requested in the second request for production
18 of documents, even though they mostly relate to the
19 receivership, Your Honor. So we do stand before the Court
20 ready to proceed promptly as you direct, and you're certainly
21 welcome to set remedies in the event that there's a problem
22 going forward. But I doubt that there will be. Just some of
23 the quotes from both the Boulis case and the National Hockey
24 case. This is certainly not truly egregious conduct, Your
25 Honor. It's not contumacious conduct. Contumacious is

1 defined by Webster as willfully stubborn or other disobedient
2 conduct, punishable as contempt of court. There's no
3 flagrant bad faith and no -- certainly no callous disregard
4 for this Court's orders, Your Honor. So we respectfully
5 request that the order be denied, and that you would set a
6 new scheduling order. Thank you, Your Honor.

7 MR. ALLEN (TELEPHONIC): Your Honor, can I make an
8 additional point in relation to the assignment?

9 THE COURT: All right. Mr. Allen.

10 MR. ALLEN (TELEPHONIC): Your Honor, we are
11 concerned about the issue of the fact that, in a sense, Mr.
12 Jaeban appears to have taken the benefit of the right of
13 action without a corresponding burden. Having looked through
14 the agreement and looking through the file here, it's
15 apparent that Mr. Jaeban has a personal guarantee in respect
16 to the debt of Jaeban (U.K.) Limited, so he was exposed in
17 any event to the debts of Jaeban (U.K.) Limited, and,
18 therefore, there would be no reason to put that specific
19 provision in this assignment.

20 THE COURT: Well, when you say he has a personal
21 guarantee of the debts of Jaeban (U.K.) Limited, tell me
22 precisely what you mean. You mean a generalized guarantee?

23 MR. ALLEN (TELEPHONIC): It's a generalized
24 guarantee, Your Honor. There were some -- I think there is
25 some specific restrictions on it, which we agreed directly

1 with Budget. I think those relate to acts that Mr. Jaeban is
2 not responsible for. But those benefit . . . (microphone not
3 recording) the guarantee, which I think Mr. Wile has referred
4 to showing his written submissions to the Court. There is
5 clearly a general embracing obligation of Mr. Jaeban in
6 respect to the debts of Jaeban (U.K.) Limited. There is an
7 agreement in place, signed by Mr. Jaeban, which is annexed to
8 the umbrella agreement and the international prior license
9 agreement, which are the two contracts that Budget are
10 relying on. So it's not correct to say that Mr. Jaeban did
11 not have a personal liability or exposure in relation to this
12 case.

13 MR. SULLIVAN: I don't know that Mr. Allen made
14 clear that --

15 THE COURT: Make sure you speak up into the
16 microphone so that we can hear too.

17 MR. SULLIVAN: I'm not sure that I heard Mr. Allen
18 say -- my understanding is that the guarantee is limited to
19 five hundred thousand pounds. I just wanted to make sure.

20 THE COURT: All right. So there's a five hundred
21 thousand dollar pound -- excuse me -- five hundred thousand
22 pound guarantee in favor of the debtor arising out of
23 obligations owed by Jaeban to the debtor. Everybody agree
24 with that? Okay.

25 MR. ALLEN (TELEPHONIC): Your Honor, I just think

1 Mr. Wile may well be right. It may have been five hundred
2 thousand.

3 THE COURT: Right. Everybody seems to agree on
4 that. Okay. Mr. Wile? Do you have anything further?

5 MR. WILE: I wish it were otherwise, Your Honor,
6 but I'm afraid we have to sort through those things that
7 aren't worthy of responses as opposed to those that are. Let
8 me start at the beginning. I haven't heard any explanation
9 of how Mr. Jaeban is here. Jaeban (U.K.) still hasn't
10 appeared. I think that's settled in the record. I still
11 think, given all the confusion that has been attempted to be
12 created -- not intentionally, of course, just because of the
13 situation that Mr. Jaeban and Jaeban (U.K.) and the receivers
14 find themselves in, I think that's the simplest solution
15 here. I think the Court already understands, but let me make
16 the argument anyway. Mr. Jaeban's standing matters, because
17 the next thing we get to do, and spend more money on, is to
18 file a motion for summary judgment. Because in order for him
19 to appear as assignee, and that's what it says on his
20 opposition, then he doesn't have standing.

21 THE COURT: Well, what about -- what about Rule
22 25(c) which says, In the case of any transfer of interest,
23 the action may be continued by or against the original party
24 unless the Court, upon motion, directs the person, to whom
25 the interest is transferred, to be substituted in the action,

1 or joined with the original party.

2 MR. WILE: The short answer, Your Honor, which we
3 actually touched on, I think, in our brief, was that Mr.
4 Jaeban is assuredly an indispensable party under Rule 19
5 because there's a dispute over the assignment. And we're
6 faced with a unique situation, which Rule 25 certainly didn't
7 anticipate, where Jaeban (U.K.) wants to fade away into
8 nothing as through liquidation. And if I heard Mr. Allen
9 correctly, I think what he said is Mr. Jaeban's only willing
10 to be liable on his guarantee and does not take on the full
11 liability that's there. So, therefore, we would have to
12 pierce through, because as far as I can tell, Jaeban (U.K.)
13 has not responded to our motion, and at a minimum its answers
14 and affirmative defenses ought to be stricken. In any event,
15 I don't see how in justice and good faith, we can go forward
16 without Mr. Jaeban. And let's be clear here, Your Honor, I
17 mean, from the fact that not even an appearance has been
18 filed --

19 THE COURT: Excuse me. How you can go forward
20 without Mr. Jaeban or without Jaeban (U.K.)?

21 MR. WILE: Well, let me start with Mr. Jaeban. Mr.
22 Jaeban conspicuously has not appeared yet because if he did,
23 then we'd have to face the question -- face the dilemma of
24 whether this is a compulsory counterclaim. So, we'd have to
25 sue him here knowing that all of his assets are in the U.K.

1 Which is where we would much prefer to sue him when this case
2 is brought --

3 THE COURT: You're not talking about Mr. Jaeban as
4 assignee who is trying to appear --

5 MR. WILE: No.

6 THE COURT: -- today.

7 MR. WILE: Exactly. But, no. But, I mean, it adds
8 to the confusion and the need for him to be here.

9 THE COURT: Now, was he originally sued?

10 MR. WILE: No. We couldn't, because we looked very
11 carefully and determined that he did not have minimum
12 contacts. So, we were unable to sue him here. If we could
13 have done it from day one, it might have been the most
14 efficient way to proceed. Given the mess that we're now in,
15 we respectfully submit that it's not the most efficient way
16 to proceed. We think the thing to do is bring this to an
17 end, and then do whatever is appropriate in the U.K. But in
18 any event, his standing very much becomes an issue, because
19 Jaeban (U.K.) is evidently not going to be with us much
20 longer notwithstanding it's promise on behalf it's
21 receivership.

22 THE COURT: Well, what if the -- what if there was
23 an order that said that I would allow the substitution of Mr.
24 Jaeban under the assignment only on the condition that he
25 fully substituted and was -- and took on not only the

1 benefits, but also the burdens?

2 MR. WILE: The complete burdens up to three million

3 --

4 THE COURT: Exactly.

5 MR. WILE: -- three million pounds? Well, we
6 thought about that, Your Honor.

7 THE COURT: Well, I'm just saying --

8 MR. WILE: Yeah.

9 THE COURT: -- I mean, in effect, an order -- if I
10 were to say, Yes, you've got two choices here Mr. Jaeban.
11 Either this is going to be stricken or if you want to play,
12 you've got to play with the whole deck. That could be the
13 order. Now, that would solve the problem, or at least it
14 would address the problem of whether or not there were
15 minimum contacts, and you could get jurisdiction over him,
16 because basically he would then voluntarily submit to
17 jurisdiction through this assignment, or he would say, Well,
18 no, in that case, I really don't want to. In which case I
19 would enter the order that you're asking me to do.

20 MR. WILE: And, Your Honor, we are -- we face what
21 I believe, respectfully, is a Catch 22. My guess is if he
22 has sufficient assets, he'll say no, and if he doesn't, he'll
23 say yes. And I don't know that we're much -- we certainly
24 would prefer that to proceeding forward without that.

25 THE COURT: Well, it's like any claim, though,

1 against somebody who may be insolvent. That's what we have
2 in this case from the debtor's standpoint. There are lots of
3 people who are left holding the bag.

4 MR. WILE: Yes. Well, considering we are a hundred
5 days past the last bit of discovery cooperation, and I think
6 Mr. Sullivan clarified himself, we didn't get a response to
7 documents -- a response to our second request, that would
8 still leave us with the \$4.5 million escrow, which is now
9 improperly held hostage. If he wants to take on the
10 liability and foursquare his rights to the escrow, which I
11 think that would certainly be fairer, and that would be real
12 relief --

13 THE COURT: Well, but if he took -- I mean, the
14 escrow is there, presumably, to protect Jaeban (U.K.);
15 correct?

16 MR. WILE: Correct.

17 THE COURT: So, if he took on and basically was
18 substituted in the stead of Jaeban (U.K.), not only on the
19 side of whatever benefits there would be in terms of the
20 claim that would be against the escrow, but also in terms of
21 any liability in terms of the claim by the plaintiff for the
22 debtor back against Jaeban (U.K.). I don't see how it would
23 be fair to say, Well, yes, we'll let you take on all of the
24 liabilities, but you can't proceed against the escrow. Since
25 the escrow was there originally to protect his assignor.

1 MR. WILE: With all respect, Your Honor, if we were
2 simply here on a motion to intervene, I would agree with the
3 Court. We're here on a motion to dismiss.

4 THE COURT: I understand that, and you don't have
5 to keep reminding me of --

6 MR. WILE: Sorry, Your Honor.

7 THE COURT: -- of your view of how we're here. I'm
8 trying to understand what would be the impact if I were to
9 structure something in the way that I'm talking about now.
10 And as I said to somebody in the hearing earlier, I'm making
11 this up as I go along. So, nobody should think that -- that
12 this is necessarily what I'm going to do. I'm trying to get
13 your reaction to what would happen if that's what the nature
14 of the order was.

15 MR. WILE: Well, there's a further element that I
16 think would have to go along with that, and believe me, we
17 certainly regard that as far from ideal, which is there is
18 the immediate turnover order that's out there. That
19 assuredly is binding, and we did not file a contempt motion,
20 conscious that we've already inflicted more motion practice
21 than we wanted to on the Court, because we were told, Jaeban
22 (U.K.) doesn't have any money. But if somebody is out there,
23 and wants to pursue these counterclaims, it seems to me
24 that's a contempt that would have to be purged as a door
25 opening measure before they can go forward and given his

1 guarantee that wouldn't be entirely inappropriate either.

2 THE COURT: Now, the three hundred thousand --
3 three hundred and eighty four thousand, I think is the
4 number, on the turnover order, again was precisely for what
5 obligation?

6 MR. WILE: Okay. Three hundred -- I think it's
7 three hundred and twenty eight thousand pounds, although --

8 THE COURT: Whatever. Okay.

9 MR. WILE: And Mr. Sullivan's agreeing with me.
10 Mr. Sullivan, Mr. Allen's colleague at Wragg and Co.,
11 admitted that that amount was due and owing back in May of
12 2003. And we --

13 THE COURT: This is -- this is part of the same
14 claim?

15 MR. WILE: Absolutely.

16 THE COURT: This is where you got the partial
17 summary judgment on that amount because everybody -- because
18 there was essentially a concession on the part of the
19 defendant that they owed that amount.

20 MR. WILE: Well, characteristically they simply
21 said nothing, but, yes.

22 THE COURT: Okay. So, it's not a separate claim,
23 it's just --

24 MR. WILE: That is --

25 THE COURT: -- part -- it's the partial summary

1 judgement of the overall claim.

2 MR. WILE: It's three million pounds less three
3 hundred and twenty eight thousand pounds, Your Honor.
4 Absolutely.

5 THE COURT: Okay. All right. So your point would
6 be, Okay, if we're going to have something like that, at the
7 least, the three hundred and twenty eight thousand pounds
8 should be paid.

9 MR. WILE: Absolutely, Your Honor.

10 THE COURT: Now, their argument would be, Well,
11 wait a minute, you know, we have -- we have a claim in excess
12 of that. And your argument would be, Well, that's fine,
13 you've got the protection of the escrow. So if, in fact,
14 your claim is in excess of that, you can collect it against
15 the escrow.

16 MR. WILE: We would happily reduce the escrow to
17 three -- the equivalent of three hundred and twenty eight
18 thousand pounds, Your Honor, yes. That would certainly be
19 the case.

20 THE COURT: Well and that's, of course, one way to
21 do that. I mean, one way to accomplish what you're saying is
22 to purge the turnover would simply be to take the three
23 hundred and twenty eight thousand pounds out of the four and
24 a half million dollar escrow and just reduce it and pay that
25 money back to -- to the plaintiff. Why wouldn't that work?

1 MR. WILE: I'm not sure that giving out the order
2 -- the short answer is that's something I had not thought of,
3 Your Honor. The short answer is I simply don't know.

4 THE COURT: Well, here's --

5 MR. WILE: I'm sorry. May I consult with my
6 colleague? Yeah. Well, you're in essence paying us out of
7 our money, Your Honor. Brain cramp on my part, I apologize.
8 It's our money.

9 THE COURT: Well, yes. I understand that, that I'm
10 paying you out of money that you put up to protect them.

11 MR. WILE: Right. And it doesn't have its intended
12 effect, I think of -- where I think the Court seems to be
13 headed, respectfully, which is --

14 THE COURT: I'm not headed anywhere, Mr. Wile. I'm
15 just -- I'm just asking.

16 MR. WILE: I have been presumptuous. I apologize
17 for that, Your Honor. But it seems to me that they should be
18 paying from their money and not out of ours.

19 THE COURT: Okay. Anything else?

20 MR. WILE: Just leaving aside, again, individual
21 complaints that could properly be made against what Mr.
22 Sullivan had to say, I think we -- we see before us an
23 unending series of hearings like this, I fear. We have a
24 motion to join Mr. Jaeban, you know, as an indispensable
25 party, a contempt motion, a summary judgment motion, and so

1 forth, all the while, trying to proceed with discovery and
2 I'm sure with the -- certainly the best intentions here in
3 Delaware. But that's only gotten worse and worse, and
4 frankly I can't tell the Court that I can necessarily produce
5 everybody now I could have produced back in November and
6 December. November 25th, I think, is about the date when
7 cooperation completely ceased. As far as personal
8 responsibility, we did cover that in our brief. I find it
9 risible, however, that Jaeban (U.K.) is not responsible for
10 its conduct, and I don't get the point about Jaeban (U.K.)'s
11 attorneys and attorney conduct here. It is, in fact, bad
12 faith as a matter of law in the Third Circuit to cause your
13 attorneys to -- to disappear. And I really do fear that we
14 will lose any deterrent effect if we just let this one slip
15 by when someone who could have purchased the claim earlier,
16 is certainly very close to his assignor, is able to waltz in
17 and in essence protect his guarantee and his assets in the
18 U.K. by dragging this out long after I think it should have
19 been put to bed respectfully.

20 THE COURT: Now, what about the argument that was
21 made by Mr. Sullivan that the debtor doesn't have the
22 standing to enforce the anti-assignment clauses because it no
23 longer is a party to the contract?

24 MR. WILE: Thank you, Your Honor. I should have
25 covered that, and that does point out why it would have been

1 nice to have heard about this beforehand. And certainly --

2 THE COURT: His argument, he didn't hear about your
3 anti-assignment until the reply.

4 MR. WILE: I know, I understand that. But the
5 anti-assignment provisions -- I understand Mr. Sullivan has
6 done everything he possibly could to get up to speed as his
7 predecessor did. But the anti-assignment provisions are not
8 unknown in other places, Your Honor, which is why we would
9 have liked to have known. The short answer is, these claims
10 arise as of the date they were filed, and as of the date that
11 the escrow occurred, and as of the time of the claims. There
12 was no right of assignment. That's my short answer. If the
13 Court would like, I'm happy -- and if that concerns the
14 Court, I'm happy to address it further. But I would like --

15 THE COURT: You can just address it as much as you
16 want. If that's enough for you, that's enough for me.

17 MR. WILE: In terms of on my feet, Your Honor, I
18 think that's the most obvious answer is they take this claim
19 as they find it. And that's subject to the various
20 restrictions that are in the documents that created the
21 claim.

22 THE COURT: All right. Anything else?

23 MR. WILE: No, Your Honor.

24 MR. CORE (TELEPHONIC): Your Honor, it's Patrick
25 Core from . . . (microphone not recording), actually from

1 London. I swore an affidavit that was filed. Can I make one
2 comment with your permission on the assignment and draw the
3 Court's attention to two specific provisions?

4 THE COURT: All right. Go ahead.

5 MR. CORE (TELEPHONIC): First of all, in the
6 umbrella agreement, on paragraph -- bear with me two seconds
7 -- 42.6.

8 THE COURT: Am I looking in the assignment?

9 MR. CORE (TELEPHONIC): I'm looking at the umbrella
10 agreement.

11 MR. WILE: Your Honor, that would --

12 MR. CORE (TELEPHONIC): . . . (microphone not
13 recording) papers, maybe Mr. Wile can help us with that.

14 MR. WILE: Absolutely. May I approach the bench?
15 It's an exhibit to our complaint and to our motion for
16 partial summary judgment, and I was wary of inflicting yet
17 more paper.

18 THE COURT: All right. Just give me a second here
19 Mr. Core.

20 MR. CORE (TELEPHONIC): Of course.

21 THE COURT: All right. I'm looking at it.

22 MR. CORE (TELEPHONIC): Okay. That talks about the
23 conditions that must attach to any assignment which is . . .
24 (microphone not recording) by BRAC. And the agreement goes
25 on to provide at 4.3 on page 8 of the same document, Your

1 Honor. The parties to this agreement, other than Budget
2 shall not have the right to assign or otherwise dispose of
3 this agreement. And then -- sorry, Your Honor, if I can then
4 take you to the license agreement, and in particular to
5 paragraph 12.1, which is at page 56 of the license agreement.

6 THE COURT: All right.

7 MR. CORE (TELEPHONIC): Budget may assign, or
8 otherwise deal with the rights and obligations of this
9 agreement without any consent from the licensee. I wasn't
10 sure whether Mr. Wile had made the point . . . (microphone
11 not recording) very well, but I just wanted to make sure that
12 the representation was made on behalf of Jaeban about the
13 fact that BRAC was in breach of the contract. There is
14 specific provision in the contract to allow the assignment
15 without reference to the licensee, subject only to insuring
16 that anyone who takes benefit of or takes on the obligation,
17 which obviously reflect the terms of the agreement agreed
18 with Avis. And that's why we had the escrow account, to make
19 sure that if there are any liabilities was the -- was BRAC --
20 was the contractor on this agreement so they . . . were
21 provided for. And if I may, Your Honor, I want to make one
22 more point of the U.K.'s position regarding the indemnity
23 factor you considered a few moments ago. It is established
24 as a matter of English law that Mr. Jaeban has agreed to give
25 an indemnity to the assignor, being the company, being Jaeban

1 (U.K.). Then we as a creditor, we being BRAC, as a creditor
2 of Jaeban will not have the full benefit of that indemnity.
3 Because any recovery . . . the indemnity by Jaeban (U.K.) in
4 receivership -- in liquidation I should say, will be
5 available for distribution to the general body of creditors
6 after costs. But we will not take directly the benefit of
7 that indemnity. And I think that may be relevant to the
8 possible item that you were making or one of the
9 possibilities that you were exploring where you may require,
10 or may consider requiring as a term of any order allowing Mr.
11 Jaeban to participate in this proceeding that he actually
12 stands in the shoes, and is personally liable. I would say
13 it's very important. Because from our point of view . . .
14 that relying on the indemnity . . . one, we have an
15 appropriate contract issue we have to deal with, and
16 secondly, we would only have a claim to participate in any
17 recovery under the indemnity. We wouldn't have direct access
18 to the money.

19 THE COURT: All right.

20 MR. CORE (TELEPHONIC): (Microphone not recording).

21 THE COURT: All right. Thank you, Mr. Core. All
22 right, I'll issue an order on this matter, as soon as
23 possible.

24 MR. WILE: Thank you.

25 THE COURT: The matter will be submitted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WILE: Thank you.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: Anything else on our calendar for BRAC today.


MR. MORTON: That concludes the debtors matters, Your Honor.

THE COURT: All right. Then we're adjourned.

MR. MORTON: Thank you, Your Honor.

(Whereupon at 3:10 p.m. the hearing in this matter was concluded for this date.)

I, Elaine M. Ryan, approved transcriber for the United States Courts, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.


Elaine M. Ryan
2801 Faulkland Road
Wilmington, DE 19808
(302) 683-0221

5.04.04

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
BRAC GROUP, INC., <u>et al.</u> ,)	Case No. 02-12152 (CGC)
(f/k/a Budget Group, Inc.))	
)	(Jointly Administered)
Debtors.)	
)	
BRAC GROUP, INC. (f/k/a Budget Group,)	
Inc.) et al.)	
)	
Plaintiffs)	
)	
v.)	Adv. No. 03-54271
)	
JAEBAN (U.K.) LIMITED, et al.)	
)	
Defendants)	

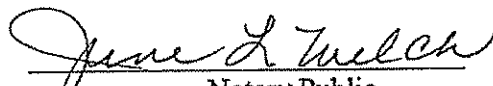
AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Melissa L. Bertsch, being duly sworn according to law, deposes and says that she is employed by the law firm of Young Conaway Stargatt & Taylor, LLP, attorneys for BRACII, and that on the 4th day of February 2005, she caused a copy of the attached **Memorandum in Opposition to Mr. Jaeban's Motion for Reconsideration** to be served, as indicated, upon the parties on the attached service list.


Melissa L. Bertsch

SWORN TO AND SUBSCRIBED before me this 4th day of February 2005.


Notary Public

JUNE L. WELCH
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Aug. 23, 2007

SERVICE LIST

BRACII

2/4/2005

Messrs. John Whitfield & Gerald Clifford Smith
Administrative Receivers of Jaeban (UK) Limited
c/o RSM Robson Rhodes LLP
7 Hill Street, Centre City Tower
Birmingham, B5 4UU UK
Federal Express (International)

Mark D. Collins, Esq.
Rebecca Booth, Esq.
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(Counsel for Joint Administrators of BRAC)
(Rent-A-Car International, Inc.)
Hand Delivery

Ian Weatherall, Esq.
Wragge & Co. LLP
55 Colmore Row
Birmingham B3 2AS, England
(Counsel for Receivers of Jaeban)
Federal Express (International)
& Electronic Mail

Steve Allen, Esq.
Mills & Reeve
54 Hagley Road
Edgbaston
Birmingham B16 8PE, England
Counsel for Jaeban UK Limited
Federal Express (International)
& Electronic Mail

Brian A. Sullivan, Esq.
Robert D. Wilcox, Esq.
Werb & Sullivan
300 Delaware Avenue, 10th Floor
P.O. Box 25046
Wilmington, DE 19899
(Counsel for Ibrahiem Jaeban)
Hand Delivery
& Electronic Mail

Kenneth E. Wile, Esq.
Sidley Austin Brown & Wood
10 South Dearborn Street, BankOne Plaza
Chicago, IL 60603
(Co-counsel for BRACII)
First Class Mail
& Electronic Mail